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In The Supreme Court of the United States

OCTOBER TERM, 1994

20TH CENTURY INSURANCE CO., *et al.*,
Petitioners,

v.

CHARLES QUACKENBUSH,
INSURANCE COMMISSIONER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of California

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SUPPLEMENTAL BRIEF

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Petitioners State Farm Mutual Automobile Insurance Company, State Farm Fire and Casualty Company, and State Farm General Insurance Company ("State Farm") file this Supplemental Brief pursuant to S. Ct. Rule 15.7 in light of the settlement agreement reached between the respondent Insurance Commissioner and petitioners 20th Century Insurance Company and 21st Century Casualty Company ("20th Century"), and the subsequent supplemental brief filed by the Insurance Commissioner.[1] The decision of 20th Century to settle its rollback liability and withdraw as a petitioner in no way affects the ongoing vitality of State Farm's petition for certiorari, or in any way lessens the need for this Court to grant that petition and review the fundamentally flawed decision of the Cali-

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[1] Petitioners' Rule 29.1 statement appears at Pet. ii.

fornia Supreme Court. The Commissioner's arguments to the contrary are based on an incomplete and inaccurate rendition of the procedural history of the case, have nothing whatever to do with the withdrawal of 20th Century from the case, and simply reflect the Commissioner's keen desire to avoid review of a decision he has not defended and cannot defend on the merits.

1. It is undisputed that State Farm was a party to the decision and judgment below. The California Supreme Court, in the "Disposition" section of its opinion, specifically directed the entry of "judgment in favor of the Insurance Commissioner and Voter Revolt and against 20th Century, Hartford, *State Farm*, et al." Pet. App. 128a (emphasis added). In his subsequent Petition for Writ of Prohibition and Mandate filed with the California Supreme Court, the Commissioner himself referred to State Farm as one of the "parties to *20th Century Insurance Co.* v. *Garamendi.*" Petition for Writ of Prohibition and Mandate, at 2 (Nov. 18, 1994).

As a party to the decision and judgment below, State Farm is entitled to seek review of that decision and judgment through a petition for writ of certiorari, 28 U.S.C. § 1257(a), which it did. Under this Court's rules and practice, State Farm may raise in its Petition any question properly raised or decided below. The "Question Presented" in State Farm's Petition was plainly both raised and decided before the California Supreme Court, and accordingly is properly before this Court on certiorari.

2. The Commissioner seeks to restrict State Farm's right to petition for certiorari on an issue raised and decided below by arguing—for the first time at the eleventh hour—that State Farm was only a party with respect to the so-called "leverage" issue. This is plainly incorrect. As explained in the Petition for Certiorari, *see* Pet. ii, 6-7 n.1, State Farm was a plaintiff in *Hartford Steam Boiler Inspection and Ins. Co.* v. *Garamendi.* That case was consolidated with the 20th Century actions with respect to the leverage issue in order to *add* that inextricably inter-

twined issue to the ones in the 20th Century test case; the participation of State Farm and the Hartford Steam Boiler parties as parties in the test case was in no sense *restricted* to the leverage issue.

This understanding is confirmed by a critical fact the Insurance Commissioner omits in his recital of the procedural history of the case. The insurers prevailed on the leverage issue before the Superior Court, Pet. App. 205a-206a, and the Commissioner and Voter Revolt appealed to the Court of Appeal. As the California Supreme Court noted in its opinion, "20th Century, Allstate, and Hartford together with other insurers *including State Farm,* filed separate notices of cross-appeal." Pet. App. 42a (emphasis added). *See* App. in Cal. S. Ct. at 8852-8861 (notice of cross-appeal). Given that it had prevailed on the leverage issue, State Farm's cross-appeal plainly involved issues *other than* the leverage issue. Only parties can appeal or cross-appeal, so State Farm's participation as a party was clearly not limited to the leverage issue; it was permitted to cross-appeal on other issues.

The California Supreme Court transferred the cause from the Court of Appeal. Pet. App. 3a. The Supreme Court expressly noted that it was "decid[ing] appeals *and cross-appeals* from a judgment of the Los Angeles County Superior Court in three consolidated cases." *Id.* (emphasis added). The California Supreme Court's acceptance and decision of the cross-appeals confirms that the court below did not view State Farm's party status (or that of the Hartford Steam Boiler parties) as in any way limited to the leverage issue. The Commissioner's failure to interpose any objection to State Farm's cross-appeal confirms that he also saw no such limitation on State Farm's right to participate in the case as a party.[2]

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[2] Among the issues on which State Farm did not prevail before the Superior Court, and which were the subject of the cross-appeal, were issues directly tied to the Question Presented in the Petition for Certiorari. *See, e.g.*, Pet. App. 185a-195a (Superior Court ruling upholding Commissioner's adoption of lower boundary reasonable

3. 20th Century's settlement and motion to withdraw as a petitioner in no way affects the validity of State Farm's petition. The joinder of two or more parties in a single petition is expressly authorized by this Court's rules, S. Ct. Rule 12.2, and is quite common. The withdrawal of one such party due to death, settlement, or any other such occurrence does not affect the continuing vitality of the petition; at most, such an event results in an alteration of the case caption.

Indeed, every argument that the Commissioner raises in his supplemental brief about State Farm's status was as true when the Commissioner filed his Opposition to Certiorari as it is today, yet that Opposition raised none of these concerns or in any way drew a distinction between arguments and issues 20th Century could raise and those State Farm could raise. The Commissioner's filing is simply an effort to take broader advantage of the leverage he enjoyed over 20th Century as a result of that insurer's losses arising from the January 1994 Northridge earthquake, *see* Pet. 11 n.6, yet 20th Century's withdrawal as a petitioner hardly moots State Farm's challenge to the decision below. The Commissioner's effort to argue the contrary simply confirms once again what we noted in our Reply Brief: that the Commissioner is unwilling and unable to defend the decision below on the merits.

4. The Commissioner also errs in arguing that the withdrawal of 20th Century removes the "as applied" challenges from the case, leaving only facial challenges. The distinction the Commissioner seeks to draw is not pertinent to the issues in the case. The Question Presented in the Petition concerns the legal standard adopted by the California Supreme Court to assess the insurers' claim that the implementation of Proposition 103 con-

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rate of return against challenge that rate was confiscatory under *Federal Power Comm'n* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1944)). State Farm thus plainly participated as a party below on the very issues it has presented in its Petition for Certiorari.

fiscates their property. The Commissioner does not maintain, and there certainly is no reason to suppose, that the legal standard will vary from one insurer to another. As we explained *before* 20th Century filed its motion to withdraw from the case, "[o]ur Petition does not ask this Court to decide what return 20th Century received, or to calculate 20th Century's cost of capital. All we seek is a hearing on our confiscation claim under the correct constitutional standard." Reply Br. at 4.

State Farm was a party to the California Supreme Court decision and judgment articulating the legal standard governing insurers' confiscation claims. That standard plainly governs the disposition of State Farm's claim. State Farm accordingly is entitled to seek review of that standard before this Court on petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, and those in the Petition and Reply Brief, this Court should grant the writ and reverse the decision below.

Respectfully submitted,

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